

**REMARKS**

**Claim Rejections:**

Claims 26, 27, 29 and 30 are all of the claimed pending in the present application, and currently all of these claims stand rejected. Claims 28 and 31-33 have been canceled without prejudice or disclaimer.

***35 U.S.C. § 102(e) Rejection - Claims 26 and 28:***

Claims 26 and 28 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,321,012 to Shen. In view of the following discussion, Applicant respectfully traverses the above rejection.

Shen discloses a fiber optic cable containing at least one buffer tube, which houses a plurality of individual optical fibers being arranged in a plurality of bundles. The bundles of optical fibers are held together by different colored binder threads made of a water swellable material.

However, Shen fails to disclose a fiber optic cable comprising at least one buffer tube housing a plurality of bundles of optic fibers being held together by a flexible binder having physically detectable features positioned within the flexible material, where the physically detectable features contain physically active elements. Specifically, the simple coloration of the binders, in Shen, is not physically active, but is passive. As such, Shen fails to disclose each and every feature of the claimed invention.

For example, Shen fails to disclose fluorescing or magnetic elements, which are physically active. Applicant submits that the colors of binders are not physically active. Color does not influence its environment, as do physically active elements.

In view of the foregoing, Applicant submits that Shen fails to disclose each and every feature of the claimed invention. Accordingly, Applicant submits that Shen fails to anticipate the claimed invention, as required under the provisions of 35 U.S.C. § 102(e). Accordingly, Applicant hereby requests the Examiner reconsider and withdraw the above 35 U.S.C. § 102(e) rejection of claim 26.

***35 U.S.C. § 102(e) Rejection - Claims 26 and 29:***

Claims 26 and 29 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Australian Reference No. 9211367 to Oberschlake. In view of the following discussion, Applicant respectfully traverses the above rejection.

As an initial matter, Applicant notes that the Examiner appears to be only relying on the Derwent English translation of the German Reference DE9203161U, which appears to correspond to Australian Reference AU1136792, as Applicant was not provided with any English translation of the entire reference. Therefore, Applicant's following discussion, will be based solely on the English Abstract provided by the Examiner.

Turning now to the above rejection, Oberschlake indicates that a dielectric locatable fiber optic cable containing at least one longitudinal optic fiber also contains at least one longitudinal component comprising a compound containing a ferrite powder mixed with a binder, preferably selected from a group comprising PVC, polypropylene and PE. Oberschlake further indicates

that the ferrite powder is compounded with the binder and may be incorporated in the upjacket around a central strength member, in the outer jacket, around the radial strength yarns or in one or more buffer tubes.

However, Applicant notes that the term “binder”, as used in Oberschlake, is referring to an agent for binding the ferrite powder in a compound. As such, the “binder” defined or discussed in Oberschlake does not relate to the claimed “binder.” Namely, there is no teaching or disclosure of a “binder” stranded around a fiber optic bundle, where the binder comprises a flexible material and a plurality of physically detectable features positioned within the flexible material. Namely, the “binder” disclosed in Oberschlake is simply a compound or resin used to combine with the ferrite powder to create a component, which is not stranded around any other component.

In view of the foregoing, Applicant submits that Oberschlake fails to disclose each and every element of the claimed invention, in particular the claimed etching adjustment layer. Therefore, Oberschlake fails to anticipate the claimed invention, as required under the provisions of 35 U.S.C. § 102(b). Accordingly, Applicant hereby requests the Examiner reconsider and withdraw the 35 U.S.C. § 102(b) rejection of the above claims.

***35 U.S.C. § 102(e) Rejection - Claims 32 and 33:***

Claims 32 and 33 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,243,519 to Ishikawa et al. However, Applicant notes that these claims have been canceled without prejudice or disclaimer. Accordingly, this rejection is now moot.

***35 U.S.C. § 103(a) Rejection - Claims 32 and 33:***

Claims 32 and 33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,243,519 to Ishikawa et al. in view of U.S. Publication No. 2002/0009272 to Parris. However, Applicant notes that these claims have been canceled without prejudice or disclaimer. Accordingly, this rejection is now moot.

***35 U.S.C. § 103(a) Rejection - Claim 27:***

Claim 27 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the Shen reference in view of U.S. Publication No. 2002/0009272 to Parris.

However, Applicant notes that Shen is only available as prior art under the provisions of 35 U.S.C. § 102(e). Further, Applicant submits that the Shen reference, along with the claimed invention, were commonly owned by Alcatel (or at least under an obligation to assign to Alcatel) at the time the present invention was made. Accordingly, under the provisions of 35 U.S.C. § 103(c), Applicant submits that the Shen reference may not be applied against the pending claims in a rejection under 35 U.S.C. § 103(a).

Accordingly, Applicant hereby requests the Examiner withdraw the above rejection of claim 27.

***35 U.S.C. § 103(a) Rejection - Claims 27 and 30:<sup>1</sup>***

Claims 27 and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Oberschlake in view of U.S. Patent No. 5,809,194 to Lovie. However, Applicant submits that as these claims depend on claim 26, and Lovie fails to cure the deficient teachings of Oberschlake

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<sup>1</sup> Claim 28 has been canceled without prejudice or disclaimer.

AMENDMENT UNDER 37 C.F.R. §1.111  
Application Number: 10/761,398

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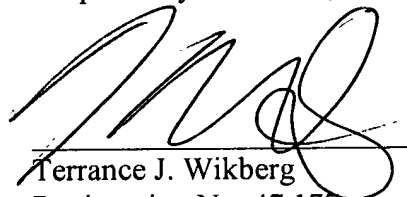
(discussed above), Applicant submits that these claims are also allowable, at least by reason of their dependence.

**Conclusion:**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

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